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City and County of San Francisco

OFFICE OF THE CONTROLLER

HUMAN RIGHTS COMMISSION:

Compliance Audit of the Port of San Francisco Contract
with Kin Wo Construction, Inc.



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Edward Harrington
Controller

Matthew H. Hymel
Chief Assistant Controller

December 22, 2000

Audit Number: 00017

Port Commission
Port of San Francisco
Ferry Building, Room 3100
San Francisco, CA 94111

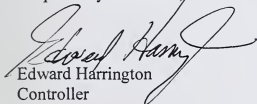
President and Members:

The Controller's Audits Division presents its audit report concerning the construction contract between the Port of San Francisco (Port) and Kin Wo Construction, Inc. (Kin Wo). The San Francisco Administrative Code requires the director of the Human Rights Commission, in cooperation with the Office of the Controller (Controller), to conduct random audits of contractors to ensure they properly meet their commitments to subcontract with minority and women business enterprises. We conducted this audit to verify whether Kin Wo met the requirements of the City and County of San Francisco to subcontract with business enterprises owned by minorities and women.

Because Kin Wo had not submitted all documents necessary for the Port to close the contract, the Port has not closed the contract nor fully paid this contractor. Kin Wo, in turn, has not fully paid its subcontractors. Kin Wo made a commitment to award to minority and women business enterprise subcontractors 27 percent (\$133,800) of the maximum contract amount of \$514,428. Through July 31, 2000, Kin Wo had paid the minority and women business enterprise subcontractors 21 percent (\$104,600) of the total contract amount.

The Port's response is attached to this report. The Controller's Audits Division will be working with the department to follow up on the status of the recommendation made in the report.

Respectfully submitted,



Edward Harrington
Controller



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RESULTS IN BRIEF

As of July 31, 2000, the construction contract between the Port of San Francisco (Port) and Kin Wo Construction, Inc. (Kin Wo), remained open because Kin Wo had not submitted all documents necessary for the Port to close the contract. Moreover, Kin Wo had not yet met its commitment to the City and County of San Francisco (City) to pay 27 percent of the total contract amount to subcontractors that qualify as businesses owned by minorities or women. Section 12D of the San Francisco Administrative Code requires City departments to encourage their contractors to show good-faith efforts to engage minority business enterprise (MBE) and women business enterprise (WBE) subcontractors. In its contract, which began on June 23, 1998, Kin Wo committed to award 27 percent (\$133,800) of its maximum contract amount of \$514,428 to MBE and WBE subcontractors. Because Kin Wo had not submitted all documents necessary for the Port to close the contract, the Port paid Kin Wo only \$417,152 of the contract amount through July 31, 2000, and Kin Wo had paid its MBE and WBE subcontractors 21 percent (\$104,600) of the contract amount. During our audit, we also found sufficient evidence that each MBE and WBE subcontractor performed the work for which it received payment from Kin Wo. Finally, our review showed that Port staff generally entered correct information regarding this contract into the Citywide Diversity Tracking System; however, the database information was incomplete because staff had not entered into the system the subcontract amount for each of Kin Wo's subcontractors.

INTRODUCTION

The Port of San Francisco (Port) of the City and County of San Francisco (City) awarded a contract to Kin Wo Construction, Inc., (Kin Wo), on June 23, 1998, to construct a parking and wash facility at Pier 50 for Port vehicles. The contract award amount is not to exceed \$514,428. In its bid, Kin Wo made a commitment to award 23 percent (\$115,800) of the contract to subcontractors who qualify as minority business enterprises (MBE) and 4 percent (\$18,000) to subcontractors who qualify as women business enterprises (WBE). According to the San Francisco Administrative Code (Administrative Code), Section 12D, a MBE is an economically disadvantaged local business owned and controlled by one or more minority persons and certified by the Human Rights Commission; a WBE is an economically disadvantaged local business owned and controlled by one or more women and certified by the Human Rights Commission.

The Administrative Code, Section 12D, is known as the Minority/Women/Local Business Utilization Ordinance (ordinance). The ordinance is intended to correct identified discriminatory practices found in the City's procurement processes and in the awarding of contracts to MBE, WBE, and local business enterprise contractors. The ordinance requires the City's contract-awarding authorities to encourage its contractors to make good-faith efforts to subcontract with MBEs and WBEs.

The director of the Human Rights Commission is to keep a database to report on the progress each City department has made towards the achievement of MBE and WBE participation goals. City departments are required to maintain correct, complete information in this database, the Citywide Diversity Tracking System, regarding their contracts.

The ordinance also requires the director of the Human Rights Commission, in cooperation with the Office of the Controller (Controller), to conduct random audits of contractors to ensure they properly meet their commitments to subcontract with MBEs and WBEs. The director selected this contract for audit.

SCOPE AND METHODOLOGY

The purpose of this audit was to determine if Kin Wo met its commitment for MBE and WBE subcontractor participation in its contract with the Port and if the subcontractors actually performed the work. We also assessed whether key information in the Citywide Diversity Tracking System is correct and complete. The audit period was June 23, 1998, through July 31, 2000.

To conduct the audit, we reviewed the applicable terms of Kin Wo's contract with the Port and assessed Kin Wo's procedures for managing and subcontracting the work on the project. We verified whether the Human Rights Commission had certified the designated subcontractors as MBEs or WBEs when the Port awarded the contract. To determine whether Kin Wo paid these subcontractors the amounts detailed in the contract, we confirmed with each of these subcontractors the amounts received during the audit period. To determine whether the MBE and WBE subcontractors performed the work specified, we reviewed these subcontractors' records, including payroll and other records for the audit period. In addition, we conducted interviews with the Port's construction managers, Kin Wo, and the MBE and WBE subcontractors. To evaluate the information in the Citywide Diversity Tracking System, we reviewed key information entered into the system by the Port, and we investigated any discrepancies.

AUDIT RESULTS

KIN WO HAS NOT YET COMPLETED ITS CONTRACT OR MET ITS COMMITMENT FOR PARTICIPATION BY MINORITY AND WOMEN BUSINESS ENTERPRISE SUBCONTRACTORS

Because Kin Wo Construction, Inc., had not submitted all documents necessary for the Port to close its contract with Kin Wo, the Port had not paid Kin Wo the entire amount of the contract. Moreover, Kin Wo had not completely fulfilled its commitment to pay its minority business enterprises (MBE) and women business enterprises (WBE) subcontractors 27 percent of the maximum contract amount of \$514,428. As of July 31, 2000, the Port had paid Kin Wo only \$417,152. Kin Wo, in turn, had paid its MBE and WBE subcontractors 21 percent (\$104,600) of the total amount of the contract. Table 1 shows the amount Kin Wo had paid its MBE and WBE subcontractors as of July 31, 2000, and the progress it made in meeting the commitment for MBE and WBE participation specified in its contract.

Table 1
Participation of Minority and Women Business Enterprise Subcontractors
Kin Wo Construction, Inc.
June 23, 1998 through July 31, 2000

Minority and Women Business Enterprise Subcontractors	Committed Amount	Percentage of Contract Amount	Paid to Subcontractors	Percentage of Contract Amount
MBE Subcontractors				
W.L. Electrical	\$78,000	16	\$67,000	13
Far East Construction	<u>37,800</u>	<u>7</u>	<u>10,000</u>	<u>2</u>
Subtotal	\$115,800	23	\$77,000	15
WBE Subcontractors				
Doherty Painting & Construction	9,000	2	\$19,500	4
Kwan Wo Ironworks	<u>9,000</u>	<u>2</u>	<u>8,100</u>	<u>2</u>
Subtotal	\$18,000	4	\$27,600	6
Total	\$133,800	27	\$104,600	21

Table 2 shows the amounts Kin Wo paid to each MBE and WBE subcontractor and the percentage of Kin Wo's contract that these amounts represent. We confirmed with each MBE and WBE subcontractor that it received the amount shown in Table 2.

Table 2
Payments to Minority and Women Business Enterprise Subcontractors
Kin Wo Construction, Inc.
June 23, 1998 through July 31, 2000

Minority and Women Business Enterprise Subcontractors	Subcontract Amount	Paid to Subcontractors	Percentage of Subcontract Amount
W.L. Electrical	\$78,000	\$67,000	86%
Far East Construction	37,800	10,000	26%
Doherty Painting & Construction	9,000	\$19,500	217%
Kwan Wo Ironworks	9,000	8,100	90%
Total	\$133,800	\$104,600	78%

Below is some specific information on subcontractors listed on Table 2:

- Kin Wo paid W.L. Electrical Company \$67,000 of the subcontract amount of \$78,000. According to Kin Wo's office manager, Kin Wo will pay the balance of \$11,000 when it receives the rest of its contract amount from the Port and when W.L. Electrical Company resolves a dispute with an equipment rental agency.
- Kin Wo paid Far East Construction Company (Far East) \$10,000 of the subcontract amount of \$37,800. According to Kin Wo's office manager, Kin Wo had not paid Far East in full because Far East had not submitted documentation of their general liability insurance, workers' compensation insurance, automobile insurance, and all of their certified payroll reports. A representative of Far East said the company had submitted all the information properly and in a timely manner to Kin Wo. We informed the Port's construction manager of this situation so he can resolve it.
- Kin Wo and Doherty Painting & Construction, Inc. (Doherty) renegotiated their subcontract agreement after the Port awarded the contract to Kin Wo. Doherty received the renegotiated contract amount of \$19,500 for its work on the project, rather than the \$9,000 Kin Wo had originally agreed to pay Doherty. According to Kin Wo's president, Kin Wo and not the Port is bearing this increased cost.
- Kin Wo paid Kwan Wo Ironworks Inc. \$8,100 of the subcontract amount of \$9,000. Kin Wo is retaining \$900 until it receives final payment from the Port.

We also found sufficient evidence to show that each MBE and WBE subcontractor performed the work for which it received payment. For three of the four MBE and WBE subcontractors, we reviewed a sample of the certified payroll reports these subcontractors submitted to the Port. We compared the certified payroll reports to the daily log kept by the Port showing the number of subcontractors' employees working at the job site, and we verified that employees on the certified payroll reports also appeared on the subcontractors'

payroll records. For the fourth subcontractor, Kwan Wo Ironworks Inc., we reviewed the delivery receipt and payment records that showed this subcontractor performed the work.

THE PORT GENERALLY ENTERED COMPLETE, ACCURATE INFORMATION INTO THE CITYWIDE DIVERSITY TRACKING SYSTEM

Although the information that Port staff entered into the Citywide Diversity Tracking System was accurate in the fields we tested, Port staff did not enter complete information in all fields. After consulting with Human Rights Commission staff and a Department of Telecommunications and Information Services programmer responsible for the system, we selected several fields from the Citywide Diversity Tracking System to determine if the Port entered complete, correct information for this contract. All the information we tested was correct, but the Port did not enter the subcontract amount for each subcontractor into the system. The Port's human resources manager said the Port is working to enter this data.

RECOMMENDATIONS

To comply fully with the Minority/Women/Local Business Utilization Ordinance in the San Francisco Administrative Code, we recommend that the Port of San Francisco take the following steps:

- Continue to monitor participation of MBE and WBE subcontractors to ensure that Kin Wo Construction, Inc., achieves the participation goals in its contract with the Port.
- Continue to monitor Kin Wo's payments to MBE and WBE subcontractors to ensure that these subcontractors receive full payment for their work on the project.
- For each contract that it enters in the Citywide Diversity Tracking System, enter complete information.

We conducted this review according to generally accepted government auditing standards. We limited our review to those areas specified in the audit scope section of this report.

Staff: Ben Carlick, Audit Manager
Millicent Bogert

RESPONSE TO THE AUDIT
PORT OF SAN FRANCISCO



December 15, 2000

Ben Carlick
Audit Manager
Office of the Controller
City Hall
1 Dr. Carlton B. Goodlett Place, Room 338
San Francisco, CA 94102

Subject: *Draft Audit Report of HRC Compliance Audit of Pier 50 Parking and Wash Area Contract*

Dear Mr. Carlick,

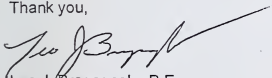
The Port has reviewed the draft report and has the following comments:

- The draft report correctly states that, as of July 31, 2000, the construction contract with Kin Wo remained open because Kin Wo had not submitted all documents necessary for the Port to close the contract. While additional payments have been made to Kin Wo since July 31, the Port is still awaiting a final pay request in order to close out the job. Port staff will continue to work with the contractor to close out all open items and complete the contract.
- The dispute between W. L. Electrical and Kin Wo has been resolved, to the best of our knowledge.
- While the Port was aware that Far East Construction had not yet submitted some documentation to Kin Wo, no Stop Notices have been filed by Far East Construction and we were unaware that payments had been withheld from the subcontractor because of this. We will, however, look into this issue.
- The Port has completed entering all current data for this project into the Citywide Diversity Tracking System

The Port fully intends to implement the recommendations included in the report by 1) Continuing to monitor the participation goals in this contract; 2) Continuing to monitor payments to subcontractors; and 3) Entering complete information into the Citywide Diversity Tracking System on a timely basis.

Please feel free to contact me at 274-0544 or my e-mail address (see below) if I can be of further assistance.

Thank you,



Leo J. Bragagnolo, P.E.
Construction Manager
Port of San Francisco

Leo_Bragagnolo@sfport.com,

Cc: Ben Kutnick, John Woo, Kathy Mallegni, Cliff Jarrard

cc: Mayor
Board of Supervisors
Civil Grand Jury
Public Library
Budget Analyst
KPMG LLP
Human Rights Commission

